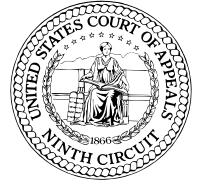




Office of the Clerk
UNITED STATES COURT of APPEALS for the NINTH CIRCUIT
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**Amendments to the
LOCAL RULES
for the Ninth Circuit Court of Appeals
effective January 1, 2006**

All Circuit Rules and General Orders listed below are effective January 1, 2006. The changes are highlighted.

CIRCUIT RULES	TITLE	New or Revised	PURPOSE OF AMENDMENT
Circuit Rule 27-1(c)	Filing of Motions (1) Form of Motions	New	To eliminate redundancy between federal and circuit rules concerning number of copies required.
Circuit Rule 35-3	Limited En Banc Court	Revised	This is a two-year experiment.

CIRCUIT RULE 27-1

FILING OF MOTIONS

All motions must be filed with the Clerk in San Francisco. Except for same-day emergencies as described in Circuit Rule 27-3(2), counsel should not contact a circuit judge regarding any motion.

(1) Form of Motions

- (a) The typeface and type style requirements of Fed. R. App. P. 32(a)(5) and (6) apply to motions, responses and replies. (*New, 7/1/2002*)
- (b) The court requires an original and four (4) copies of motions, responses to motions, replies, and any supporting papers and appendices. (*Rev., 7/1/2002*)
- (c) The provisions of Fed. R. App. P. 27(d)(1) otherwise govern the format of motions. (*New 1-1-06*)

CIRCUIT RULE 35-3

LIMITED EN BANC COURT

The en banc court, for each case or group of related cases taken en banc, shall consist of the Chief Judge of this circuit and 14 additional judges to be drawn by lot from the active judges of the Court. In the absence of the Chief Judge, a 15th active judge shall be drawn by lot, and the most senior active judge on the panel shall preside. [rev. 1-1-06]

The drawing of the en banc court will be performed by the Clerk or a deputy clerk of the Court in the presence of at least one judge and shall take place on the first working day following the date of the order taking the case or group of related cases en banc.

If a judge whose name is drawn for a particular en banc court is disqualified, recused, or knows that he or she will be unable to sit at the time and place designated for the en banc case or cases, the judge will immediately notify the Chief Judge who will direct the Clerk to draw a replacement judge by lot.

In appropriate cases, the Court may order a rehearing by the full court following a hearing or rehearing en banc.

Cross Reference: FRAP 40, Petition for Rehearing.

CIRCUIT ADVISORY COMMITTEE NOTE TO RULES 35-1 TO 35-3

(1) Calculation of Filing Deadline. *Litigants are reminded that a petition for rehearing en banc must be received by the clerk in San Francisco on the due date. See, Federal Rule of Appellate Procedure 25(a)(1) and (2)(A) and Circuit Rule 25-2; see also, United States v. James, 146 F.3d 1183 (9th Cir. 1998). Pursuant to General Order 6.3a, the clerk may grant (1) upon motion or sua sponte, an extension of time of no more than seven (7) calendar days in all cases subject to the 14-day filing period and (2) upon motion, an extension of time of no more than thirty (30) days in direct criminal appeals. (Rev. 12-1-02)*

(2) **Petition for Rehearing for En Banc.** When the clerk receives a timely petition for rehearing en banc, copies are sent to all active judges. If the panel grants a rehearing it so advises the other members of the Court, and the petition for rehearing en banc is deemed rejected without prejudice to its renewal after the panel completes action on the rehearing. Cases are rarely reheard en banc.

If no petition for rehearing en banc has been submitted and the panel votes to deny rehearing an order to that effect will be prepared and filed.

If a petition for rehearing en banc has been made, any judge may, within 21 days from receipt of the en banc petition, request the panel to make known its recommendation as to en banc consideration. Upon receipt of the panel's recommendation, any judge has 14 days to call for en banc consideration, whereupon a vote will be taken. If no judge requests or gives notice of an intention to request en banc consideration within 21 days of the receipt of the en banc petition, the panel will enter an order denying rehearing and rejecting the petition for rehearing en banc.

Any active judge who is not recused or disqualified and who entered upon active service before the request for an en banc vote is eligible to vote. A judge who takes senior status after a call for a vote may not vote or be drawn to serve on en banc court. This rule is subject to two exceptions: (1) a judge who takes senior status during the pendency of an en banc case for which the judge has already been chosen as a member of the en banc court may continue to serve on that court until the case is finally disposed of; and (2) a senior judge may elect to be eligible, in the same manner as an active judge, to be selected as a member of the en banc court when it reviews a decision of a panel of which the judge was a member.

The En Banc Coordinator notifies the judges when voting is complete. If the recommendation or request fails of a majority, the En Banc Coordinator notifies the judges and the panel resumes control of the case. The panel then enters an appropriate order denying en banc consideration. The order will not specify the vote tally.

(3) **Grant of Rehearing En Banc.** When the court votes to rehear a matter en banc, the Chief Judge will enter an order so indicating. The vote tally is not communicated to the parties. The three-judge panel opinion shall not be cited as precedent by or to this court or any district court of the Ninth Circuit, except to the extent adopted by the en banc court. (Rev. 1/1/2000)

After the en banc court is chosen, the judges on the panel decide whether there will be oral argument or additional briefing. If there is to be oral argument, the Chief Judge (or the next senior active judge as the case may be) will enter an order designating the date, time and place of argument. If no oral argument is to be heard, the Chief Judge will designate a date, time, and place for a conference of the en banc court. That date will ordinarily be the submission date of the case. If any issues have been isolated for specific attention, the order may also set forth those issues and additional briefing may be ordered. The opinion of the three-judge panel shall not be cited as precedent by or to this court or any district court of the Ninth Circuit, except to the extent adopted by the en banc court. (Rev. 1/2003)

4. *Increasing Size of En Banc Court:* *The Court will be experimenting for a two-year period by increasing the number of judges on the limited en banc court from eleven judges to fifteen judges. (New, 1-1-06)*

Cross Reference: Fed. R. App. P. 32(c)(2); Fed. R. App. P. 40.
